

Yes, there is an issue of discrimination here, a mild discrimination, and a quite unlikely discrimination that might be directed by State legislatures against Internet sellers and a massive discrimination that is being directed today against the Main Street retailer.

I believe these two issues are interconnected, and we should do as Senator ENZI is suggesting: At the same time we grant an extension of the moratorium, we build into that extension a mechanism that will result in the resolution of this much bigger issue of discrimination—the discrimination against the Main Street seller.

Mr. WYDEN. Will the distinguished Senator from Florida yield for a question?

Mr. GRAHAM. In just a moment when I complete my remarks, I will be pleased to yield.

The reality is that what we are about here, for those who are new to this issue, is the fact that time is on the side of the distant sellers. Right now, a relatively small percentage of American retail sales are conducted over the Internet, but that percentage has been growing every year. Already the distant sellers have acquired enough influence to cause the House of Representatives to take the action it has taken and to build considerable support within the Senate for an extension of the moratorium without any mechanism to deal with the discrimination against Main Street and the discrimination against the children and the other citizens who depend upon State and local government for fundamental services such as education and police.

The secret of those who would like to effectively make this discrimination against Main Street permanent is they want to continue moratorium after moratorium until the percentage of people who are using the Internet is so great that there will be no political constituency to deal with this discrimination.

I state for myself and I believe for others that we consider this to be a core issue of the future of federalism in America; that we have to have strong State and local governments, and we have to depend upon them to make decisions appropriate to their people. State and local governments, as one who served there for 20 years, do not like taxing their people. They are as sensitive to that as we are in Washington, maybe more so.

We should not deny them the capacity to make the decisions that are in the best interest of their people. That is a fundamental part of our federalist system, that different levels of government have responsibilities and must accept the obligation of those responsibilities, including the appropriate way to finance them.

So this is, as I say, a very basic issue. I, for one, will insist before we extend this moratorium beyond the very short period as suggested by the Senator from North Dakota that any longer extension must be linked to a process,

not a solution but a process, to move us towards the resolution of this fundamental discrimination that exists within our Nation and within our economy today.

I yield to the Senator from Oregon for his question.

Mr. WYDEN. I thank my colleague, and I think he knows I am very much committed to working with him and with Senator ENZI. I do not know how many hours we have put in over the last 18 months trying to do this. My question was designed really to get a sense of the thinking of the Senator on a particular point that may help us move this issue along.

What I and many others are concerned about is sticking it to sellers who are located thousands of miles away from a local jurisdiction and that seller has no presence in the local jurisdiction other than a Web site. That is the only presence they have today. Of course, the Supreme Court has said there has to be physical presence, under a current Court decision, in order to do that.

In the view of the Senator from Florida, what is the case for imposing these various taxes—of course, anything that is already owed can be collected under the current Internet tax freedom bill, so we are talking about something new. What is the case in the mind of the Senator for having changed treatment of that particular seller who is located thousands of miles from a local jurisdiction and who has no presence in that jurisdiction other than a Web site?

Again, I do not ask this question for any other reason than I think it would be helpful for me and others who spent a significant amount of time to get the thinking of colleagues as we try to figure out a way to move forward on it.

Mr. GRAHAM. I appreciate the very sincere and committed effort the Senator has made to try to arrive at a resolution, and I hope in this debate which has arisen today, and will arise with greater frequency now that the moratorium is about to lapse, that we can reach such a resolution.

What I think is basic is, first, the Constitution. The Constitution vests—and it was one of the most controversial debates at the Constitutional Convention of 1787—in the Federal Government the control of interstate commerce. The Supreme Court, as I read the most recent opinions on this issue, did not say requiring distant sellers to collect sales tax was unconstitutional. Rather, they said it was unauthorized; that it would take an affirmative act of Congress to sanction the States to require distant sellers—that is, sellers who did not have a physical presence in their State—to collect their sales tax.

So the issue is, we have to take an affirmative act in order to empower the States to require that distant sellers should collect their sales tax. So then the question is why—

The PRESIDING OFFICER (Mrs. CLINTON). The time of the Senator from

Florida has expired in morning business.

Mr. GRAHAM. Madam President, I ask for an additional 2 minutes to complete the answer to the question from the Senator from Oregon.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRAHAM. So the question then is whether we should take that affirmative action. I think we should for two basic reasons. One is fairness. It is, in my judgment, intolerable to have an economic system in which government says if you are selling from a distant location, you are at a competitive advantage over persons who are selling on Main Street. That is precisely the current circumstance of requiring one to collect sales tax but not requiring the other to do it, and it is not an insubstantial competitive disadvantage. In my State, depending on which locality one is in, it could be a 6-, 7-, or more percent differential.

Second, the practical effect of this is going to be to erode the capacity of State and local governments, acting through the democratic process of representative election and decision, as to what services should be provided and how they should be financed to substantially erode that capability.

My State happens to be particularly dependent upon sales tax. About 70 percent or more of our general revenue is collected by sales tax. So if there were a significant percentage of that which moved from Main Street to distant seller, it would have an immediate and substantial impact on the capacity of our State to educate its children, to defend our people through police, to protect our people in time of emergency through fire and other emergency response institutions.

So this is a basic question of whether we at the national level are going to say to our brethren in the 50 States that for all time you are going to be saddled by this discrimination, which will have the effect of eroding your capacity to decide how to finance the services your people are asking you to provide.

I do not believe all wisdom resides in Washington. I believe in a distributed democracy and that we ought to let 50 States and thousands of local jurisdictions make those kinds of judgments, and eliminating this massive discrimination that currently is part of our tax system will return that degree of respect and capacity to State and local governments.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. BYRD. Madam President, at what time is the Senate expected to reconvene following the recess?

The PRESIDING OFFICER. 2 p.m.

Mr. BYRD. I ask unanimous consent that at 2 p.m., when the Senate reconvenes following the recess, I be recognized for not to exceed 35 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ENZI. Madam President, I ask unanimous consent that Senator